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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,055	01/10/2006	Kenichi Makino	277006US6PCT	5660
22850	7590	12/12/2008	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.			CHU, KIM KWOK	
1940 DUKE STREET				
ALEXANDRIA, VA 22314			ART UNIT	PAPER NUMBER
			2627	
		NOTIFICATION DATE	DELIVERY MODE	
		12/12/2008	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/564,055	<b>Applicant(s)</b> MAKINO ET AL.
	<b>Examiner</b> Kim-Kwok CHU	<b>Art Unit</b> 2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on Amendment filed on 9/3/2008.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8 is/are rejected.  
 7) Claim(s) 9 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 10 January 2006 is/are: a) accepted or b) objected to by the Examiner.  
   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
   Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
   Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

***Response to Remarks***

1. Applicant's Amendment and Remarks filed on September 3, 2008 have been fully considered. Regarding to the amended claims, Applicant states that the prior art of Seto et al. (U.S. Publication US2002/0041692) does not teach the amended feature "calculating a similarity value between environmental variables at present and environmental variables stored in a reproduction history means" (page 11 of the Remarks, lines 16 and 17). Accordingly, the prior art of Seto discloses a driver's favorite music titles which are selected based on the driver vehicle's status (Fig. 3). The similarity value as in Applicant's claims is interpreted as the favorite degree in Seto's music selection analysis section 3 (Fig. 1). For example, Seto's vehicle favors music title 1 is selected after judging (calculating) whether the vehicle repeats the following similarities based on the vehicle's environmental variables such as location, speed, and time etc. (Fig. 3). In other words, Seto's music titles are selected based on stored environmental variables (Figs. 1 and 3) and the chosen music title is a result of converting (calculating) favorite parameter X and C (Fig. 7) as required in Applicant's amended claims.

Regarding to the specification, there is a drawing issue before Claims are allowable. A new objection which were

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inadvertently missed to cover is made in the following drawing  
objection section.

***Drawings Objected To, Details Not Shown***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "environmental variable acquisition means" must be shown or the feature canceled from the claim(s). No new matter should be entered.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

*A person shall be entitled to a patent unless --  
(b) the invention was patented or described in a printed publication in this  
or a foreign country or in public use or on sale in this country, more than  
one year prior to the date of application for patent in the United States.*

4. Claims 1-8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Seto et al. (U.S. Publication US2002/0041692).

5. Seto teaches a reproducing apparatus having all of the elements and means as recited in claims 1-5. For example, Seto teaches the following:

(a) with respect to Claim 1, the reproducing apparatus comprising: a contents data recording medium 52 (Fig. 1) in which a plurality of contents data (music) are recorded; environmental variable acquisition means 2 for acquiring environmental variables (traveling locations are environmental variables; Fig. 1; page 2, section 0032); reproduction history storage means 51 for preserving identification information (titles of favorite music) of reproduced contents data combined with the environmental variables at a time of reproduction (Fig. 1; page 2, section 0025, lines 11-14); and reproduction control means 4 for calculating a similarity value (favorite degrees with respect to

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the vehicle's locations, speed, time etc.) between environmental variables (locations, speeds, times) at present and environmental variables stored in the reproduction history storage means for each of the plurality of contents data (Fig. 1, favorite information is stored), and for selecting and reproducing contents data whose similarity value (favorite degree) is judged to be closest to a predetermined threshold X (Figs. 3 and 7).

(b) with respect to Claim 2, the environmental variables include at least one of location information, time information and environmental information, positioning means to specify the location is provided when the environmental variables include location information (Fig. 3; page 3, section 39); timer means to measure the time is provided when the environmental variables include time information (Fig. 3; time and season are recorded based on the music); and an environmental information sensor (such as speed sensor) to measure the environmental information (traveling status) is provided when the environmental variables include environmental information (Figs. 1 and 3).

(c) with respect to Claim 3, the environmental variables include at least two of location information, time information and environmental information, the reproduction control means 4 obtains the similarity with respect to any one of location

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information, time information and environmental information of the environmental variables (Figs. 1 and 7), obtains the similarity with respect to the other information than the one of information when a plurality of similar environmental variables based on this similarity exist (Fig. 7); and selects and reproduces the contents data from said contents data recording medium based on this similarity value X (Fig. 9; step S7).

(d) with respect to Claim 4, attribute information storage means 31 to preserve (input) attribute information (favorite degree) of the contents data (music) associated with identification information (Fig. 3) of the contents data (Fig. 1), wherein when it is judged based on the similarity value obtained that no environmental variables of the past similar to environmental variables at present exist (favorite music analysis), the reproduction control means 4 obtains a closeness value as a measure of suitability between environmental variables at present and the attribute information of the contents data, and selects and reproduces the contents data from the contents data recording medium based on the measure of suitability (Fig. 1; music selection).

(e) with respect to Claim 5, communication control means 1 (data link in Fig. 1) for transmitting environmental variable 2

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at present to a remote service center 3, 4 (Fig. 1; separated elements and means are remote service centers) when it is judged based on the similarity value that no environmental variables of the past similar to environmental variables at present exist (Fig. 9; step S7), and for receiving identification information from the remote service center 3, 4 (Fig. 1) wherein the reproduction control means selects and reproduces the contents data (music) from the contents data recording medium 52 based on identification information sent from the service center 3, 4, and the service center 3, 4 includes storage means (editing unit) to record the attribute information of the contents data associated with the identification information of the contents data and selection control means 3, 4 (music selected in the editing unit) to select the identification information of the contents data judged to be close to the environmental variables based on suitability between the environmental variables supplied and the attribute information (Figs. 7 and 8), and to transmit the identification information to the communication control means 1 (Figs. 1 and 9).

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6. Method claims 6-8 are drawn to the method of using the corresponding apparatus claimed in claims 1, 4 and 5. Therefore method claims 6-8 correspond to apparatus claims 1, 4 and 5 and are rejected for the same reasons of anticipation as used above."

***Allowable Subject Matter***

7. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is an Examiner's statement of reasons for the indication of allowable subject matter:

As in claim 9, the prior art of record fails to teach or fairly suggest an information recording carrier having following feature:

(a) the controller calculates the similarity value based on the equation:

$$Sn = Wc * 4\sqrt{((x-xn)^2 + (y-yn)^2)} + Wm * |m-mn| + Wt * |t-tn| + Wp * |p-pn|$$

where Sn is the calculated similarity value, Wc is a weight factor of location, x is a present longitude, Xn is nth history of longitude, y is a present latitude, yn is nth history of

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latitude, Wm is a weight factor of time, m is a current time, mn is nth history of time, Wt is a weight factor of temperature, t is a current temperature, tn is nth history of temperature, Wp is a weight factor of pressure, p is a current pressure, and pn is nth history of pressure.

The features indicated above, in combination with the other elements of the claims, are not anticipated by, nor made obvious over, the prior art of record.

#### **Related Prior Art**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tagawa (7,227,071) is pertinent because Tagawa teaches a music-location matching system.

10. *Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).*

*A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.*

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11. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kim CHU whose telephone number is (571) 272-7585 between 9:30 am to 6:00 pm, Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoa Nguyen, can be reached on (571) 272-7579.

The fax number for the organization where this application or proceeding is assigned is (571) 273-8300

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished application is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9191 (toll free).

/Kim-Kwok CHU/

Examiner AU2627  
December 3, 2008  
(571) 272-7585

/HOA T NGUYEN/

Supervisory Patent Examiner, Art Unit 2627